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Attorneys for Defendant  
RSM MCGLADREY, INC.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LI DONG MA, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

RSM MCGLADREY, INC., a  
corporation; AMERICAN EXPRESS  
TAX AND BUSINESS SERVICES,  
INC., a corporation; and DOES 1-100,  
inclusive,

Defendants.

C08 01729

Santa Clara County Superior Court  
Case No. 108CV106397

**NOTICE OF REMOVAL OF  
CIVIL ACTION TO THE UNITED  
STATES DISTRICT COURT;  
DECLARATION OF TAMMY  
DEAL**

Complaint Filed: Feb. 21, 2008  
Trial Date: None

**TO THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA:**

**PLEASE TAKE NOTICE** that Defendant RSM McGladrey, Inc.  
("RSM" or "Defendant") files this Notice of Removal pursuant to 28 U.S.C.  
sections 1441 and 1446, asserting original federal jurisdiction under 28 U.S.C.  
section 1332(d)(2), to effect the removal of the above-captioned action, which was  
originally commenced in the Superior Court of the State of California in and for  
the County of Santa Clara. This Court has original jurisdiction over the action

1 pursuant to the Class Action Fairness Act of 2005 ("CAFA") for the following  
2 reasons:

### 3 BACKGROUND

4 1. On or about February 21, 2008, Li Dong Ma ("Plaintiff") filed a class  
5 action complaint against RSMM alleging claims for failure to pay overtime  
6 compensation, failure to properly compensate for missed meal breaks, failure to  
7 furnish proper wage statements, failure to pay all wages owed upon termination of  
8 employment and violations of Business and Professions Code section 17200 on  
9 behalf of a putative class of current and former employees. Plaintiff defines the  
10 putative class to include "all salaried persons employed by Defendants in  
11 California to do accounting work but who were not licensed or certified by the  
12 State of California in the practice of accounting and were not paid overtime for  
13 hours in excess of 8 hours in a day or 40 hours in a week (collectively referred to  
14 as 'Uncertified Employees') from January of 2004 to the present" (the "Putative  
15 Class").<sup>1</sup> Plaintiff seeks declaratory and injunctive relief, compensatory and  
16 punitive damages, penalty wages, interest, attorney's fees, and restitution. A true  
17 and correct copy of the Complaint is attached hereto.

### 18 TIMELINESS OF REMOVAL

19 2. The Complaint was served upon RSMM on February 29, 2008. See  
20 Exhibit A. This Notice of Removal is timely as it is filed within thirty days of the  
21 date the Complaint was served upon Defendant. 28 U.S.C. § 1446(b). RSMM  
22 answered the Complaint in the state court on March 28, 2008. See Exhibit A. A  
23 true and correct copy of the Answer is attached as Exhibit B.

### 24 ORIGINAL JURISDICTION—CLASS ACTION FAIRNESS ACT

25 3. This Court has original jurisdiction of this action under CAFA,  
26

27 <sup>1</sup> Plaintiff asserts that her claims are subject to a four year statute of limitations.  
28 Therefore, for purposes of removal, the operative period of liability for her class  
action complaint is from February 21, 2004 until February 21, 2008.

1 codified in pertinent part at 28 U.S.C. section 1332(d)(2). As set forth below, this  
 2 action is properly removable, pursuant to 28 U.S.C. section 1441(a), in that the  
 3 district court has original jurisdiction over the action, because the aggregated  
 4 amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the  
 5 action is a class action in which at least one class member is a citizen of a state  
 6 different from that of Defendant. 28 U.S.C. §§ 1332(d)(2) & (d)(6). Furthermore,  
 7 the number of putative class members is greater than 100. 28 U.S.C. § 1332  
 8 (d)(5)(B).

#### 9 DIVERSE CITIZENSHIP OF THE PARTIES

10 4. **Plaintiff's Citizenship.** Plaintiff alleges and RSMM is informed and  
 11 believes, and on that basis alleges, that Plaintiff is currently a resident of the State  
 12 of California. Complaint ¶ 4. To establish citizenship for diversity purposes, a  
 13 natural person must be both (a) a citizen of the U.S., and (b) a domiciliary of one  
 14 particular state. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir.  
 15 1983). Residence is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins.*  
 16 *Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). Plaintiff alleges that she worked  
 17 for RSMM in Mountain View, California and that she is a resident of California.  
 18 RSMM is informed and believes, and on that basis alleges, that Plaintiff is  
 19 domiciled in California. Complaint ¶ 4. Therefore, Plaintiff is, or was at the  
 20 institution of this civil action, a citizen of California. Complaint at ¶¶ 3-4.<sup>2</sup>

21 5. **Citizenship of RSMM.** Pursuant to 28 U.S.C. section 1332(c), "a  
 22 corporation shall be deemed to be a citizen of any State by which it has been  
 23 incorporated and of the State where it has its principal place of business." RSMM  
 24 is now, and ever since this action commenced has been, incorporated under the  
 25 laws of the state of Delaware, with its principal place of business in Bloomington,  
 26 Minnesota. Declaration of Tammy Deal ("Deal Decl."), attached hereto as Exhibit

27  
 28 <sup>2</sup> Plaintiff neglected to number a paragraph in between ¶ 3 and ¶ 4 of her  
 Complaint. Venue is discussed in the unnumbered paragraph.

1 D, ¶ 3.

2 6. The principal place of business is determined by using one of two  
3 tests. The “place of operations” test examines which state “contains a substantial  
4 predominance of corporate operations.” *Industrial Tectonics, Inc. v. Aero Alley*,  
5 912 F.2d 1090, 1092 (9th Cir. 1990). Courts in the Ninth Circuit analyze “a  
6 number of factors to determine if a given state contains a substantial predominance  
7 of corporate activity, including the location of employees, tangible property,  
8 production activities, sources of income, and where sales take place.” *Tosco Corp.*  
9 *v. Comm. For a Better Environment*, 236 F.3d 495, 500 (9th Cir. 2001). Another  
10 relevant factor is the location of the defendant’s executive and administrative  
11 functions. *Arellano v. Home Depot U.S.A.*, 245 F. Supp. 2d 1102, 1107 (S.D. Cal.  
12 2003).

13 7. The second test, the “nerve center test,” locates a company’s  
14 “principal place of business in the state where the majority of its executive and  
15 administrative functions are performed.” *Tosco Corp.*, 236 F.3d at 500 (citing  
16 *Industrial Tectonics*, 912 F.2d at 1092-93). The Ninth Circuit “applies the place of  
17 operations test unless the [company’s] activities do not substantially predominate  
18 in any one state.” *Tosco Corp.*, 236 F. 3d at 500. Where there is no substantial  
19 predominance of operations in any one state, the nerve center test applies: “This  
20 test is generally utilized when a corporation’s activities are far flung and operations  
21 are conducted in many states.” *Arellano*, 245 F. Supp. 2d at 1106.

22 8. Relevant considerations under this test include where the directors and  
23 officers meet and live, where the executives live and work, where the  
24 administrative and financial offices and records are located, where the “home  
25 office” is located, where policy decisions are made, and where day-to-day control  
26 of the business is exercised. *See Unger v. Del E. Webb Corp.*, 233 F. Supp. 713,  
27 716 (ND Cal. 1964).

28

1           9.     RSMM's activities are widely dispersed throughout the United States.  
2     Because its business operations do not substantially predominate in any one state,  
3     the "nerve center test" is the applicable test to determine the company's principal  
4     place of business. Deal Decl. at ¶ 4.

5           10.    RSMM's principal place of business is located in Bloomington,  
6     Minnesota. Deal Decl., ¶ 3. RSMM's "national office" for purposes of performing  
7     executive functions, is located in Bloomington, Minnesota. Deal Decl., ¶ 3.  
8     RSMM maintains its national office at 3600 American Boulevard West, 3<sup>rd</sup> Floor,  
9     Bloomington, Minnesota 55431. Deal Decl., ¶ 3. RSMM's executive operations  
10    are managed from this location, including but not limited to, those operations  
11    relating to administering company-wide policies and procedures, legal affairs, and  
12    general operations of its tax, accounting and consulting business. RSMM  
13    considers and treats Minnesota as its headquarters. Deal Decl., ¶ 3. As a result,  
14    RSMM is not now, and was not at the time of the filing of the Complaint, a citizen  
15    of the state of California within the meaning of the Acts of Congress relating to the  
16    removal of cases.

17          11.    Additionally, RSMM earns revenue in 50 states, the District of  
18    Columbia and Puerto Rico. California accounts for approximately 8.9 percent of  
19    RSMM's total revenue. Deal Decl., ¶ 5.

20          12.    RSMM employs no more than 9.4% percent, or 374 of its 3,968 full-  
21    time employees, in California. Deal Decl., ¶ 6. In contrast, RSMM employs  
22    approximately 745 employees in Illinois (18.8%), 455 employees in Minnesota  
23    (11.5%), 447 employees in Iowa (11.3%), 288 employees in New York (7.3%),  
24    and 274 employees in Maryland (6.9%). Deal Decl., ¶ 6.

25          13.    **Citizenship of American Express Tax and Business Services.**  
26    Plaintiff names American Express Tax and Business Services as an additional  
27    defendant. On August 1, 2005, American Express Tax and Business Services was  
28

1 acquired by RSMM and no longer operates as a separate corporate entity or  
2 employs any employees within the putative class. Deal Decl. at ¶ 7. RSMM has  
3 no information that Plaintiff ever served the complaint on American Express Tax  
4 and Business Services.

5 14. **Doe Defendants.** Pursuant to 28 U.S.C. section 1441(a), the  
6 residence of fictitious and unknown defendants should be disregarded for purposes  
7 of establishing removal jurisdiction under 28 U.S.C. section 1332. *Fristos v.*  
8 *Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants  
9 are not required to join in a removal petition). Thus, the existence of Doe  
10 defendants one through one-hundred, inclusive, does not deprive this Court of  
11 jurisdiction.

#### 12 AMOUNT IN CONTROVERSY

13 15. The claims of the individual members in a class action are aggregated  
14 to determine if the amount in controversy exceeds the sum or value of \$5,000,000.  
15 28 U.S.C. § 1332(d)(6). In addition, Congress intended for federal jurisdiction to  
16 be appropriate under CAFA “if the value of the matter in litigation exceeds  
17 \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the  
18 defendant, and regardless of the type of relief sought (e.g., damages, injunctive  
19 relief, or declaratory relief).” Senate Judiciary Committee Report, S. REP. 109-14;  
20 at 49. Moreover, the Senate Judiciary Committee’s Report on the final version of  
21 CAFA makes clear that any doubts regarding the maintenance of interstate class  
22 actions in state or federal court should be resolved in favor of federal jurisdiction.  
23 S. REP. 109-14, at 49 (“[I]f a federal court is uncertain about whether ‘all matters  
24 in controversy’ in a purported class action ‘do not in the aggregate exceed the sum  
25 or value of \$5,000,000,’ the court should err in favor of exercising jurisdiction over  
26 the case . . . . Overall, new section 1332(d) is intended to expand substantially  
27 federal court jurisdiction over class actions. Its provisions should be read broadly,

28



1 with a strong preference that interstate class actions should be heard in a federal  
2 court if properly removed by any defendant.”).

3 16. The evidence establishes by a reasonable probability that the amount  
4 in controversy, as alleged, would exceed \$5,000,000. Plaintiff seeks to represent a  
5 class of current and former RSMM employees that she calls the “Uncertified  
6 Employees.” Plaintiff seeks: (1) unpaid overtime compensation; (2) unpaid  
7 compensation for missed meal breaks; (3) penalties for inaccurate paycheck  
8 statements; (4) penalties for unpaid wages at end of employment; and (5)  
9 restitution and injunctive relief for alleged violation of Business and Professions  
10 Code section 17200. Complaint ¶ 2. Plaintiff worked in the Risk Management  
11 section of RSMM’s consulting division. Plaintiff’s class definition makes no  
12 distinction between the various divisions within RSMM. Plaintiff thus apparently  
13 seeks to represent all unlicensed salaried employees in RSMM’s tax and consulting  
14 divisions.

15 17. Based on Plaintiff’s vague definition of the putative class members in  
16 the Complaint, RSMM identified approximately 194 employees in 2007 who  
17 arguably fall within the definition of the putative class in that they are not licensed  
18 as a certified public accountant and they can be said to perform “accounting work”  
19 in either the tax or consulting groups while employed in California. Deal Decl., ¶  
20 8. Thus, the putative class numbers, including both current and former RSMM  
21 employees, exceed well over 100.

22 18. The turnover rate for this group of employees has remained roughly  
23 constant over the alleged class period and, therefore, RSMM calculates Plaintiff’s  
24 purported allegation of unpaid wages and penalties for purposes of meeting the  
25 jurisdictional minimum using the number of full-time equivalent positions. Deal  
26 Decl., ¶ 8. The average hourly rate of the 194 putative class members is  
27 approximately \$39.95. Deal Decl., ¶ 8.

28

19. Based on the number of putative class members and Plaintiff's claims, the amount in controversy for the alleged unpaid wages, missed meal breaks, inaccurate wage statements and waiting time penalties as alleged in the Complaint is at least \$5,000,000, the minimum requirement. In addition, Plaintiff has asserted class claims for restitution and injunctive relief for unfair competition, which if proven to be true, would further increase the amounts in controversy. Plaintiff also alleges that she is entitled to punitive damages, interest and attorneys' fees. See Ex. A, Prayer for Relief.

**(A) Unpaid Overtime Compensation.** Plaintiff alleges that RSMM requires the "Uncertified Employees" to regularly work more than 8 hours per day and 40 hours per week without paying them overtime compensation, and claims unpaid overtime compensation for the putative class during the class period. Assuming conservatively that the putative class worked only one hour of overtime per week, the amount of unpaid overtime compensation would be the sum of (# of putative class members or 194) x (4 years) x (50 weeks/year) x (one overtime hour/week) x (\$39.95/hour) x (1.5 overtime premium multiplier) = **\$2,325,090**.

**(B) Missed Meal Break Compensation.** Plaintiff alleges that RSMM failed to compensate putative class members for missed meal breaks. Plaintiff alleges that she was "frequently unable to take proper meal breaks." Complaint ¶ 17. Plaintiff alleges putative class members are entitled to one hour of pay for each missed meal break. Complaint ¶ 46. Based on these allegations, even assuming conservatively that Plaintiff alleges just two missed meal periods per week, the amount owed for the alleged denial of meal breaks would be (# of putative class members or 194) x (4 years of class period) x (50 weeks/year)<sup>3</sup> x (two missed breaks per week) x (\$39.95/hour) = **\$3,100,120**.

<sup>3</sup> This number assumes that employees took two weeks of vacation.



1           **(C) Labor Code § 226(e).** The Complaint alleges that RSMM failed to  
2 provide putative class members with accurate itemized wage statements, in  
3 violation of California Labor Code section 226. Complaint at ¶¶ 48-52. Under  
4 Labor Code section 226(e), employees are entitled to \$50 for the initial violation as  
5 to each employee, and \$100 for each further violation as to each employee, up to a  
6 maximum penalty of \$4,000 per each class member. The statute of limitations for  
7 recovery of penalties under Labor Code section 226 is one year. Cal. Civ. Proc.  
8 Code § 340(a). RSMM pays its employees two times per month, making the  
9 maximum amount of recovery no greater than \$2,550 per putative class member.  
10 Based on Plaintiff's allegation of \$50 for the first violation and \$100 for every  
11 violation thereafter, up to \$2,550, the money allegedly owed would equal  $\$2,550 \times$   
12  $(\# \text{ of putative full-time equivalent positions or } 194) = \$494,700$ .

13           **(D) Labor Code § 203 (Waiting Time Penalties).** In addition, Plaintiff  
14 seeks waiting-time penalties under California Labor Code section 203. Plaintiff  
15 seeks penalties under section 203 for each terminated employee who was not paid  
16 all wages owed upon termination. Plaintiff alleges that putative class members  
17 were misclassified as exempt and thus not paid overtime and not paid for missed  
18 meal periods. Accordingly, putative class members would be entitled to up to 30  
19 days of pay for any unpaid wages. Over the last four years, based on Plaintiff's  
20 allegations, there are approximately 166 former employees in the putative class.  
21 Deal Decl., ¶ 9. Given the average hourly rate of pay, thirty days of waiting-time  
22 penalties under section 203 for each putative class member  $(\$40.30 \times 8 \text{ hours per}$   
23  $\text{day} \times 30 \text{ days} \times 166)$  would equal **\$1,605,552**.

24           20. Although the foregoing alone establishes with a reasonable certainty  
25 that the amount in controversy exceeds \$5 million, Plaintiff also seeks punitive  
26 damages, interest and attorney's fees, which must also be taken into account in  
27 ascertaining the amount in controversy. *See Galt G/S v. JSS Scandinavia*, 142 F.3d  
28

1 1150, 1156 (9th Cir. 1998) (claims for statutory attorney's fees to be included in  
2 amount in controversy, regardless of whether award is discretionary or mandatory).

3 21. Attorney's fees may be awarded based on the lodestar method  
4 (calculated by applying counsel's hourly rates to the time spent and a risk  
5 multiplier where appropriate). *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir.  
6 2003). Alternatively, the court may simply award counsel a percentage of the fund  
7 recovered. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). The  
8 Ninth Circuit has established a benchmark of 25% of the recovery, which may be  
9 adjusted or replaced by a lodestar calculation "when specific circumstances  
10 indicate that the percentage recovery would be either too small or too large in light  
11 of the hours devoted to the case or other relevant factors." *Six (6) Mexican*  
12 *Workers v. Arizona Citrus Growers* 904 F.2d 1301, 1311 (9th Cir. 1990). Given  
13 the allegations contained on the face of Plaintiff's complaint, an award of  
14 attorney's fees equal to 25% of the total alleged damages would equal  
15 **\$2,368,323.00.**

16 22. Because diversity of citizenship exists, the Plaintiff being a citizen of  
17 the State of California and the RSMC being incorporated in Delaware with its  
18 principal place of business in the State of Minnesota, the amount of putative class  
19 members is over 100, and the amount in controversy exceeds \$5,000,000, this  
20 Court has original jurisdiction of the action pursuant to 28 U.S.C. section  
21 1332(d)(2). This action is therefore a proper one for removal to this Court.

## 22 **VENUE AND INTRADISTRICT ASSIGNMENT**

23 23. Venue lies in the Northern District of this Court pursuant to 28 U.S.C.  
24 sections 1441, 1446(a) and 84(c)(2). This action originally was brought in the  
25 Superior Court of the State of California, County of Santa Clara and should be  
26 assigned to the San Jose division pursuant to Local Rule 3-2(e). *See* Ex. A, ¶ 24.

1           **NOTICE OF REMOVAL**

2           24. This Notice of Removal will be promptly served on Plaintiff and filed  
3 with the Clerk of the Superior Court of the State of California in and for the  
4 County of Santa Clara.

5           25. In compliance with 28 U.S.C. section 1446(a), true and correct copies  
6 of all "process, pleadings, and orders" are attached hereto as Exhibits A and B.

7           **WHEREFORE**, Defendant requests that the above action pending before  
8 the Superior Court of the State of California for the County of Santa Clara be  
9 removed to the United States District Court for the Northern District of California.

10  
11 DATED: March 31, 2008

SEYFARTH SHAW LLP

12  
13 By 

Sheryl L. Skibbe

Attorneys for Defendant  
RSM MCGLADREY, INC.

**DECLARATION OF TAMMY DEAL**

I, Tammy Deal, declare as follows:

1. I am the Director of Compensation in Human Resources for RSM McGladrey, Inc ("RSMM"). I have been employed for RSMM since December 2003. I have personal knowledge of the matters stated herein, based on RSMM's business records as set forth below, and if called and sworn as a witness, I could and would competently testify as set forth herein.

2. For purposes of making this declaration, RSMM requested that I obtain information and review business records concerning its operating activities nationwide and within the State of California. As part of obtaining this information, I consulted such business records which included RSMM's payroll database of its employees (Peoplesoft). Accessing such information is a part of my ordinary duties as Director of Compensation. The information I compiled (as set forth in this declaration, below) was taken from records of acts or events made at or near the time by, or from information transmitted by, a person with personal knowledge, and such records were and are made and maintained in RSMM's regular practice and in the course of RSMM's regularly conducted business activity.

3. RSMM is now, and ever since this action commenced has been, incorporated under the laws of the state of Delaware, with its principal place of business in Bloomington, Minnesota. RSMM's "national office" for purposes of performing executive functions, is located in Bloomington, Minnesota. RSMM maintains its national office at 3600 American Boulevard West, 3<sup>rd</sup> Floor, Bloomington, Minnesota 55431. RSMM's executive operations are managed from this location, including but not limited to, those operations relating to administering company-wide policies and procedures, legal affairs, and general operations of its tax, accounting and consulting business. RSMM considers and

1 treats Minnesota as its headquarters.

2 4. RSMM's activities are widely dispersed throughout the United States.

3 5. RSMM earns revenue in all 50 states, the District of Columbia and  
4 Puerto Rico. California accounts for approximately 8.9 percent of RSMM's  
5 revenue.

6 6. RSMM employs 9.4% percent, or 374 of its 3,968 full-time  
7 employees, in California, 745 employees in Illinois (18.8%), 455 employees in  
8 Minnesota (11.5%), 447 employees in Iowa (11.3%), 288 employees in New York  
9 (7.3%), and 274 employees in Maryland (6.9%).

10 7. On August 1, 2005, American Express Tax and Business Services was  
11 acquired by RSMM and no longer operates as a separate corporate entity.  
12 American Express Tax and Business Services does not currently employ any  
13 putative class members.


14 8. RSMM identified approximately 194 employees in 2007 who  
15 arguably fall within the definition of the putative class in that they are not licensed  
16 as a certified public accountant and they can be said to perform "accounting work"  
17 in either the tax or consulting groups while employed in California. The turnover  
18 rate for this group of employees has remained roughly constant over the past four  
19 years. The average hourly rate is approximately \$39.95 per hour, which has  
20 increased slightly each year over the class period.

21 9. Over the last four years, there are approximately 166 former  
22 employees in the putative class.

23  
24 I declare under penalty of perjury under the laws of the United States of  
25 America and the State of California that the foregoing is true and correct and that  
26 this Declaration was executed this 31 day of March, 2008, in  
27 Bloomington, Minnesota.

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Tammy Deal



EXHIBIT A

**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**

03/03/2008

CT Log Number 513150475



**TO:** Brian Christensen, Senior Corporate Counsel  
H & R Block, Inc.  
One H&R Block Way, 13th and Main Streets  
Kansas City, MO 64105

**RE:** Process Served in California

**FOR:** RSM McGladrey, Inc. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

<b>TITLE OF ACTION:</b>	Li Dong Ma, individually and on behalf of all others similarly situated, Pltf. vs. RSM McGladrey, Inc., etc., et al., Dfts.
<b>DOCUMENT(S) SERVED:</b>	Summons, Complaint, Cover Sheet, Notice, Attachment
<b>COURT/AGENCY:</b>	Superior Court, County of Santa Clara, CA Case # SCV106397
<b>NATURE OF ACTION:</b>	Employee Litigation - Failure to pay overtime and compensate meal breaks
<b>ON WHOM PROCESS WAS SERVED:</b>	C T Corporation System, Los Angeles, CA
<b>DATE AND HOUR OF SERVICE:</b>	By Process Server on 02/29/2008 at 12:50
<b>APPEARANCE OR ANSWER DUE:</b>	Within 30 days after service - file written response // July 18, 2008 at 10:00 a.m. - Case Management Conference
<b>ATTORNEY(S) / SENDER(S):</b>	William A. Baird Milstein, Adelman & Kreger, LLP 2800 Donald Douglas Loop North Santa Monica, CA 90405 310-396-9600
<b>ACTION ITEMS:</b>	SOP Papers with Transmittal, via Fed Ex Priority Overnight , 790952730906 Email Notification, Brian Christensen bchristensen@hrblock.com Email Notification, Peggy Oertwig peggy.oertwig@hrblock.com
<b>SIGNED:</b>	C T Corporation System
<b>PER:</b>	Nancy Flores
<b>ADDRESS:</b>	818 West Seventh Street Los Angeles, CA 90017
<b>TELEPHONE:</b>	213-337-4615

Page 1 of 1 / BF

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

# SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

RSM MCGLADREY, INC., a corporation; AMERICAN EXPRESS  
TAX AND BUSINESS SERVICES INC., a corporation; and DOES  
1-100, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LI DONG MA, individually and on behalf of all others similarly situated.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

Wendel

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Downtown Superior Courthouse

191 N. First St.

San Jose, CA 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Wayne S. Kreger and William A. Baird

2800 Donald Douglas Loop North, Santa Monica, CA 90405 Tel: 310-396-9600

CASE NUMBER  
(Número del Caso)

CV 106397

DATE: FEB 21 2008

Kiri Torre

Clerk, by  
(Secretario)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010))

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

RSM McGladrey, Inc., a Corporation

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (limited liability corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

Form Adopted for Mandatory Use  
Judicial Council of California  
SUM-100 (Rev. January 1, 2004)

SUMMONS

Page 1 of 1  
Code of Civil Procedure §§ 412.10, 415

Amended Judicial Council of California

**MILSTEIN, ADELMAN & KREGER, LLP**  
 WAYNE S. KREGER, State Bar No. 154759  
 WILLIAM A. BAIRD, State Bar No. 192675  
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**LAW OFFICE OF STEVEN ELSTER**  
 STEVEN ELSTER, State Bar No. 227545  
 785/E2 Oak Grove Road, #201  
 Concord, CA 94518-3617  
 Telephone: (925) 324-2159  
 Facsimile: (925) 945-1276

Attorneys for Plaintiff,  
 Li Dong Ma

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF SANTA CLARA**

LI DONG MA, individually and on behalf of all  
 others similarly situated,

Plaintiff,

vs.

RSM MCGLADREY, INC., a corporation;  
 AMERICAN EXPRESS TAX AND BUSINESS  
 SERVICES INC., a corporation; and DOES 1-  
 100, inclusive,

Defendants.

CASE NO.: 108CV106397

CLASS ACTION COMPLAINT:

1. FAILURE TO PAY OVERTIME  
COMPENSATION
2. FAILURE TO PROPERLY  
COMPENSATE FOR MEAL BREAKS
3. FAILURE TO FURNISH PROPER  
PAYCHECK STUBS
4. FAILURE TO PAY ALL WAGES AT  
END OF EMPLOYMENT
5. VIOLATIONS OF BUSINESS AND  
PROFESSIONS CODE § 17200

**JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Milstein, Adelman & Kregar, LLP  
 2800 Donald Douglas Loop North  
 Santa Monica, CA 90405

D. Wendel

FILED

CLASS ACTION COMPLAINT

Representative Plaintiff LI DONG MA ("Plaintiff"), on behalf of herself, on behalf of the general Public, and on behalf of all others similarly situated, brings this case to challenge Defendants' lucrative, repressive and unlawful business practices and hereby demands a trial by jury and alleges as follows:

1. This is a class action brought against DEFENDANT RSM MCGLADREY, INC., a corporation; DEFENDANT AMERICAN EXPRESS TAX AND BUSINESS SERVICES INC., a corporation; and DOES 1-100 (collectively referred to as "Defendants") on behalf of a collective class of all salaried persons employed by Defendants in California to do accounting work but who were not licensed or certified by the State of California in the practice of accounting and were not paid overtime for hours worked in excess of 8 hours in a day or 40 hours in a week (collectively referred to as "Uncertified Employees") from January of 2004 to the present

2. This action alleges that Defendants: (1) failed to pay overtime for all hours worked by Uncertified Employees as required by the California Labor Code; (2) failed to properly compensate Uncertified Employees for missed meal breaks; (3) failed to furnish proper paycheck stubs when paying Uncertified Employees; (4) failed to pay all wages owed to Uncertified Employees at the end of their employment; and (5) violated California's Unfair Business Practices Act, California Business & Professions Code sections 17200, *et seq.*

JURISDICTION AND VENUE

3. This class action suit is founded upon California state law including, but not limited to, violations of the California Labor Code, the California Code of Regulations (Industrial Welfare Commission's Wage Orders) and the California Business & Professions Code, which are subject to the jurisdiction of this court.

Venue is proper in that Defendants are corporations that are authorized to conduct and do conduct significant amounts of business in Santa Clara County as well as throughout the State of California. In particular, Defendants maintain an office in Mountain View, California and a substantial part of the events and omissions giving rise to the claims of Plaintiff Li Dong Ma and other members of the Class occurred at this office..

PARTIES

4. Plaintiff LI DONG MA is a California resident who worked for Defendants during the class period.

5. Plaintiff brings this action on behalf of herself, on behalf of all others similarly situated and pursuant to California Business & Professions Code sections 17200, *et seq.*

6. At all times herein relevant, the Plaintiff was and now is a person within the Class of persons further described and defined herein.

7. At all times herein, Defendant RSM McGladrey, Inc., a corporation, and Defendant American Express Tax and Business Services Inc., a corporation, were and are business entities that conduct significant amounts of business within the county of Santa Clara and were and are primarily involved in the business of selling public accounting services.

8. Plaintiff is informed and believes and based thereon alleges that the true names and capacities, whether individual, corporate, associate, or otherwise, of Does 1-100, inclusive ("Does"), are unknown to Plaintiff, who therefore sues said Does by such fictitious names. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

9. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned Defendants were and are corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the California Labor Code; the applicable Wage Orders issued by the Industrial Welfare Commission; and California Business and Professions Code section 17200, *et seq.*

10. Plaintiff is informed and believes and based thereon alleges that each of the Doe Defendants is responsible in some manner for the conduct alleged herein and for the injuries suffered by Plaintiff and the members of the Class.

11. Plaintiff is informed and believes and based thereon alleges that Does were the agents, servants and/or employees of the other Defendants and in doing the things hereinafter



1 alleged, and at all times, were acting within the scope of their authority as such agents, servants and  
2 employees, and with the permission and consent of the other Defendants.

3 12. At all times herein mentioned, Defendants and each of them, were members of, and  
4 engaged in, a joint venture, partnership and common enterprise, and acting within the course and  
5 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

6 13. At all times herein mentioned, the acts and omissions of various Defendants, and  
7 each of them, concurred and contributed to the various acts and omissions of each and all of the  
8 other Defendants in proximately causing the injuries and damages herein alleged.

9 14. At all times herein mentioned, Defendants, and each of them, ratified each and every  
10 act or omission complained of herein. At all times herein mentioned, Defendants, and each of them,  
11 aided, abetted, and consented to the acts and omissions of each and all of the other Defendants in  
12 proximately causing the injuries and damages herein alleged.

### 13 ADDITIONAL FACTS

14 15. During the class period, Defendants regularly employed salaried workers to do  
15 accounting work but these workers were not licensed or certified by the State of California in the  
16 practice of accounting; in other words, Defendants' Uncertified Employees were not Certified  
17 Public Accountants.

18 16. Defendants uniformly classified all Uncertified Employees as exempt from overtime  
19 under the California Labor Code and the Industrial Welfare Commission's Wage Orders.

20 17. During their employment by Defendants, Plaintiff worked more than 8 hours in a day  
21 and/or 40 hours in a week but in keeping with uniform company policy with respect to all salaried  
22 Uncertified Employees, Defendants did not pay Plaintiff overtime compensation for those hours. In  
23 addition, Plaintiff was frequently unable to take proper meal breaks as required by California law.

24 18. Although classified as exempt, Plaintiff and the class members should have been  
25 paid overtime for all qualifying hours but Defendants uniformly failed to pay such overtime.

### 26 CLASS ALLEGATIONS

27 19. This action may properly be maintained as a class action pursuant to section 382 of  
28 the California Code of Civil Procedure. All claims alleged herein arise under California law for

1 which Plaintiff seeks relief authorized under California law. This Class is comprised of, and  
2 defined as:

3 All persons employed by Defendants in the State of California as salaried  
4 exempt employees doing accounting work at any time within four years of  
5 the filing of this complaint to the present but who were not licensed or  
6 certified by the State of California in the practice of accounting and were not  
7 paid overtime for hours worked in excess of 8 hours in a day or 40 hours in a  
8 week (at times referred to as the "Class").

9 20. The proposed Class is ascertainable in that its members can be identified using  
10 information contained in Defendants' payroll and personnel records.

11 21. The members of the Class are sufficiently numerous such that joinder of all members  
12 would be impracticable. Further, the disposition of the claims of the Class in a class action will  
13 provide substantial benefits to both the parties and the Court.

14 22. The California Labor Code and Wage Order provisions upon which Plaintiff bases  
15 her claims are broadly remedial in nature. These laws and labor standards serve an important public  
16 interest in establishing minimum working conditions and standards in California. These laws and  
17 labor standards protect the average working employee from exploitation by employers who may  
18 seek to take advantage of superior economic and bargaining power in setting onerous terms and  
19 conditions on employment.

20 23. The nature of this action and the format of laws available to Plaintiff and the Class  
21 make the class action format a particularly efficient and appropriate procedure to redress the wrongs  
22 alleged herein. Further, this case involves large corporate Defendants and a large number of  
23 individual employees with many relatively small claims. If each employee were required to file an  
24 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage  
25 since they would be able to exploit and overwhelm the limited resources of each individual plaintiff  
26 with their vastly superior legal and financial resources.

27 24. Requiring each member of the Class to pursue an individual remedy would also  
28 discourage the assertion of lawful claims by employees who would be disinclined to file an action  
against their former and/or current employer.

1           25. Moreover, the prosecution of separate actions by the individual Class members  
2 would create a substantial risk of inconsistent or varying adjudications with respect to individual  
3 Class members against Defendants.

4           26. There is a well-defined community of interest in the questions of law and fact  
5 involved affecting the parties to be represented. The questions of law and fact common to the Class  
6 predominate over questions which may affect individual plaintiff Class members. These questions  
7 of law and fact include, but are not limited to, the following:

8           (a) Whether each Class member was licensed or certified by the State of  
9 California in the practice of accounting;

10           (b) Whether Defendants classified each Class member as exempt;

11           (c) Whether Defendants were required by law to pay the Class overtime for all  
12 hours worked in excess of 8 hours a day and 40 hours per week;

13           (d) Whether Defendants implemented and engaged in a systematic practice  
14 whereby they improperly failed to pay for all overtime hours worked by the Class;

15           (e) Whether Defendants denied members of the Class wages in order to increase  
16 profits and lower costs;

17           (f) Whether Defendants failed to keep, maintain and/or furnish accurate records  
18 of the actual hours worked by the Class;

19           (g) Whether the Class received appropriate meal breaks in compliance with  
20 California law;

21           (h) Whether Class members no longer working for Defendants are entitled to  
22 "waiting time" penalties;

23           (i) Whether Defendants' conduct constituted an illegal, unfair, or deceptive  
24 business practice;

25           (j) Whether Defendants' systematic acts and practices violated, *inter alia*,  
26 California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, and 1194, the applicable  
27 Wage Orders of the Industrial Welfare Commission, and Business & Professions Code sections  
28 17200 *et seq.*;

(k) Whether the Class is entitled to compensatory damages under the Labor Code; and

(l) Whether Class members are entitled to injunctive relief.

27. Proof of a common business practice or factual pattern which Plaintiff experienced is representative of that experienced by the Class and will establish the right of each of the Class members to recover on the causes of action alleged.

28. Such a pattern, practice and uniform administration of illegal corporate policies with respect to employee compensation, as described herein, creates an entitlement in common for Plaintiff and the Class to recover in a civil action for the unpaid balance of the full amount of the overtime compensation owing, including interest thereon, waiting time penalties, reasonable attorney's fees and costs of suit according to the mandate of California Labor Code section 1194, *et seq.*

29. Furthermore, Plaintiff and the Class are entitled in common to restitution and disgorgement of funds withheld improperly by Defendants. Accordingly, Plaintiff, on behalf of the Class, will seek the creation of a common fund made up of the aforementioned damages.

30. Plaintiff asserts claims that are typical of the claims of the Class because she was employed by Defendants as a salaried exempt employee to do accounting work but was not licensed or certified by the State of California in the practice of accounting and was not paid overtime for hours worked in excess of 8 hours in a day or 40 hours in a week and was therefore subjected to the same uniform policies and procedures as the Class and similarly injured due to Defendants' actions.

31. Plaintiff will fairly and adequately represent and protect the interests of the Class in that she has no disabling conflicts of interest that would be antagonistic to other members of the Class. Moreover, Plaintiff seeks relief that is not antagonistic or adverse to the members of the Class in that the infringement of Plaintiff's rights and the damages Plaintiff has suffered are typical of all other members of the Class. Additionally, Plaintiff has retained counsel that is competent and experienced in class action litigation.

32. Plaintiff and the Class have all similarly suffered irreparable harm and damages as a result of Defendants' unlawful and wrongful conduct. This action will provide substantial benefits

1 to both the Class and the public since, absent this action, Defendants' unlawful conduct will  
2 continue unremedied and uncorrected.

3 33. Defendants have acted or refused to act in respects generally applicable to the Class,  
4 thereby making appropriate final and injunctive relief or corresponding declaratory relief with  
5 regard to members of the Class as a whole, as requested herein. Likewise, Defendants' conduct as  
6 described above and below is unlawful, continuing and capable of repetition and will continue  
7 unless restrained and enjoined by the Court.

### 8 FIRST CAUSE OF ACTION

9 (Failure to Pay Overtime Wages in Violation of the California Labor Code and Applicable  
10 Wage Orders of the California Industrial Welfare Commission, Against All Defendants and  
11 Docs 1-100)

12 34. The preceding paragraphs of this Complaint are realleged and incorporated by  
13 reference.

14 35. Pursuant to California Labor Code section 1194, Plaintiff may bring a civil action for  
15 overtime wages directly against the employer without first filing a claim with the Division of Labor  
16 Standards Enforcement. Further, such private actions have the support and approval of the Division  
17 of Labor Standards Enforcement.

18 36. During all relevant time periods, California Labor Code section 510 applied to the  
19 Plaintiff and the Class and provided that any work performed by a non-exempt employee in excess  
20 of 8 hours in a day or in excess of 40 hours in a week, must be compensated at one and one-half  
21 times the employee's regular rate of pay. Defendants and each of them, did not compensate Plaintiff  
22 or the Class for all hours worked in excess of 8 hours in a day or in excess of 40 hours in a week at  
23 one and one-half times their regular rate of pay.

24 37. During their employment by Defendants, Plaintiff and members of the Class were  
25 required to work more than 8 hours a day and/or 40 hours per week without receiving overtime pay.

26 38. However, Plaintiff and the Class were not exempt and should have received overtime  
27 wages in a sum according to proof for the hours they worked pursuant to the provisions of  
28

1 California's Labor Code and the applicable Wage Orders issued by the Industrial Welfare  
2 Commission of California.

3 - 39. Plaintiff is informed and believes and thereon alleges that Defendants and each of  
4 them, knew or should have known that Plaintiff and members of the Class should have been paid a  
5 premium for all overtime hours they worked and purposely and unfairly elected not to pay them for  
6 their overtime labor.

7 40. Such a pattern, practice and uniform administration of corporate policy regarding  
8 illegal employee compensation, as described herein, is unlawful and Plaintiff and the Class are  
9 entitled to recover in a civil action for the unpaid balance of the full amount of the overtime  
10 premiums owing, including interest thereon, as well as penalties, reasonable attorney's fees and  
11 costs of suit pursuant to the California Labor Code. Therefore, Plaintiff and the Class request such a  
12 recovery.

13 41. Plaintiff and the Class also seek injunctive relief to ensure that Class members are  
14 properly classified.

15 42. Plaintiff and the Class also request relief as described below.

#### 16 SECOND CAUSE OF ACTION

17 (Failure to Properly Compensate for Missed Meal Breaks in Violation of the California Labor  
18 Code, Against All Defendants and Does 1-100)

19 43. The preceding paragraphs of this Complaint are realleged and incorporated by  
20 reference.

21 44. Labor Code sections 226.7 and 512 require that every employer authorize and permit  
22 employees to take an uninterrupted meal period of not less than 30 minutes for a work period of  
23 more than five hours. If an employer fails to provide the meal periods, the employer is required to  
24 pay the employee one additional hour of compensation for each workday that a meal period is not  
25 provided.

26 45. Defendants and each of them, failed to provide Plaintiff and the Class the meal  
27 periods required under California law.  
28



46. Defendants' failures proximately caused Plaintiff and the Class to be deprived of wages and therefore entitles Plaintiff and the Class to one hour of additional pay for each improper meal break.

47. Plaintiff and the Class also request relief as described below.

### THIRD CAUSE OF ACTION

(Failure to Furnish Accurate Itemized Wage Statements in Violation of the California Labor Code, Against All Defendants and Does 1-100)

48. The preceding paragraphs of this Complaint are realleged and incorporated by reference.

49. California Labor Codes sections 226 subsection (a) and 1174 require employers to maintain and furnish each employee with an itemized statement showing the total hours worked by the employee on a semi-monthly basis or with each paycheck.

50. California Labor Code section 226(e) provides that if an employer knowingly and intentionally failed to comply with this section then the employee is entitled to recover the greater of actual damages or \$50 dollars for the initial violation and \$100 dollars for each subsequent violation, up to \$4,000, plus costs and reasonable attorney's fees.

51. Defendants knowingly and intentionally failed to furnish and maintain for Plaintiff and the Class the records required under California law. As a result, Plaintiff and the Class are entitled to the amounts provided in Labor Code section 226(e).

52. Plaintiff and the Class also request relief as described below.

### FOURTH CAUSE OF ACTION

(Failure to Timely Compensate for All Wages Due at End of Employment in Violation of the California Labor Code, Against All Defendants and Does 1-100)

53. The preceding paragraphs of this Complaint are realleged and incorporated by reference.

54. Labor Code section 201 required Defendants and each of them, to pay their employees that were discharged all wages due immediately upon discharge. Labor Code section 202 required Defendants and each of them, to pay their employees that resigned all wages due within 72

1 hours of the resignation. Defendants and each of them, in violation of these sections, willfully failed  
 2 to pay Plaintiff and the Class all wages due and owing within the timeframes required by these  
 3 statutes.

4 55. Plaintiff and all other Class members did not secrete or absent themselves from  
 5 Defendants nor refuse to accept the earned and unpaid wages from Defendants. Defendants' illegal  
 6 actions proximately caused damages to Plaintiff and the Class.

7 56. Accordingly, Defendants and each of them, are liable for waiting time penalties to  
 8 Plaintiff and the Class pursuant to Labor Code section 203 in an amount according to proof.

9 57. Plaintiff and the Class also request relief as described below

10 **FIFTH CAUSE OF ACTION**

11 (Violation of Business & Professions Code Sections 17200, *et seq.*, Unfair Business Practices,  
 12 Against All Defendants and Does 1-100)

13 58. The preceding paragraphs of this Complaint are realleged and incorporated by  
 14 reference.

15 59. Business and Professions Code § 17200 *et seq.*, prohibits acts of unfair competition  
 16 which shall mean and include any "unlawful, unfair, or fraudulent business act or practice." Plaintiff  
 17 and the Class allege that at all relevant times Defendants and each of them, have engaged in unfair  
 18 business practices in California by utilizing the illegal employment practices outlined above,  
 19 including causing Plaintiff and the Class to perform services without receiving proper compensation  
 20 as required by the California Labor Code and the applicable Wage Orders of the Industrial Welfare  
 21 Commission.

22 60. Defendants' practices are illegal and violate Labor Code sections 201, 202, 203, 226,  
 23 226.7, 510, 512, 1174, and 1194, and the applicable Wage Orders of the Industrial Welfare  
 24 Commission. Furthermore, Defendants' policies and procedures constitute unfair business  
 25 practices, unfair competition, and provide an unfair advantage over Defendants' competitors.

26 61. Defendants' actions entitle Plaintiff and the Class to seek the remedies available  
 27 pursuant to section 17200.

62. Additionally, under California law, wages unlawfully withheld from an employee constitute an unfair business act as defined by section 17200 entitling Plaintiff and the Class to a restitution remedy authorized by section 17203.

63. Plaintiff and the Class seek full restitution and disgorgement of said monies from Defendants, as necessary and according to proof, to restore any and all monies, including interest, withheld, acquired or converted by Defendants by means of the unfair practices complained of herein. Plaintiff and the Class further seek the appointment of a receiver as necessary. Plaintiff and the Class also seek an injunction and declaratory relief to remedy and prevent Defendants' improper practices.

#### PRAYER FOR RELIEF


WHEREFORE, Plaintiff prays for judgment and relief as follows:

1. An Order certifying that the action may be maintained as a class action under California Civil Code section 382;
2. For an injunction against Defendants' continued application of policies that violate California law;
3. Compensatory and statutory damages including interest thereon, and restitution, as appropriate and available under each cause of action, in an amount to be proven at trial;
3. For pre-judgment and post-judgment interest as allowed by California Labor Code sections 218.6 and 1194(a) and California Civil Code section 3287;
4. For reasonable attorney's fees, expenses and costs as provided by California Labor Code section 1194;
5. For penalties as appropriate and available under each cause of action, pursuant to the applicable Labor Code sections;
6. For restitution to Plaintiff and the Class (and disgorgement from Defendants) of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to violate California Business & Professions Code section 17200 *et seq.*;
7. For exemplary and punitive damages as appropriate and available under each cause of action, pursuant to California Civil Code section 3294; and

1 8. Such other and further relief as the Court deems proper.

2  
3 DATE: February 20, 2008

MILSTEIN, ADELMAN & KREGER, LLP

4  
5 

6 By: WILLIAM A. BAIRD

7 Attorney for Plaintiff, LI DONG MA, on Behalf of  
8 Herself, All Others Similarly Situated, and On Behalf  
9 of the General Public.  
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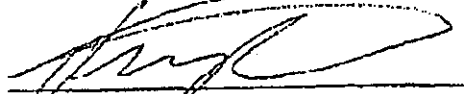
Milstein, Adelman & Kreger, LLP  
2400 Donald Douglas Loop North  
Santa Monica, CA 90405

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action existing in this lawsuit.

DATE: February 20, 2008

MILSTEIN, ADELMAN & KREGER, LLP



By: WILLIAM A. BAIRD  
Attorney for Plaintiff, LI DONG MA, on Behalf of  
Herself, All Others Similarly Situated, and On Behalf  
of the General Public.

Milstein, Adelman & Kreger, LLP  
2800 Donald Douglas Loop North  
Santa Monica, CA 90405

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Wayne S. Kreger, SBN 154759 William A. Baird, SBN 192675 2800 Donald Douglas Loop North Santa Monica, CA 90405 TELEPHONE NO.: 310-396-9600 FAX NO.: 310-396-9635 ATTORNEY FOR (Name): Li Dong Ma		FOR COURT USE ONLY           JUDGE: DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First St. MAILING ADDRESS: 191 N. First St. CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Courthouse		
CASE NAME: Ma, et al., v. RSM McGladrey, LLP et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
		CASE NUMBER: 108CV106397

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) <b>Non-PIP/DWD (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (18) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (05) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (06) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	--

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☒ Large number of witnesses
- b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 3 Causes of Action
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 20, 2008

William A. Baird

(TYPE OR PRINT NAME)

## NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use  
 Judicial Council of California  
 CM-010 (Rev. July 1, 2007)

## CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 3.30, 3.220, 3.400-3.403, 3.740  
 Cal. Standards of Judicial Administration, std. 3.10  
[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

American LegalNet, Inc.  
[www.FormsWorkshop.com](http://www.FormsWorkshop.com)



ATTACHMENT CV-5012

**CIVIL LAWSUIT NOTICE**

Superior Court of California, County of Santa Clara  
191 N. First Street, San Jose, CA 95113

CASE NUMBER: 108CV106397

**READ THIS ENTIRE FORM**

**PLAINTIFFS** (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

**DEFENDANTS** (The person(s) being sued): You must do each of the following to protect your rights:

1. You must file a **written response** to the *Complaint*, in the Clerk's Office of the Court, within **30 days** of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

**Warning:** If you do not do these three things, you may automatically lose this case.

**RULES AND FORMS:** You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) and [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules)
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

For other local legal information, visit the Court's Self-Service website [www.sccselfservice.org](http://www.sccselfservice.org) and select "Civil."

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

**You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.**

Your Case Management Judge is: Joseph Huber Department: 8C

The 1<sup>st</sup> CMC is scheduled for: (Completed by Clerk of Court)

**JUL 18 2008** Date: JUL 18 2008 Time: 10:00 am in Department 8C

The next CMC is scheduled for: (Completed by party if the 1<sup>st</sup> CMC was continued or has passed)

Date: \_\_\_\_\_ Time: \_\_\_\_\_ in Department \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.sccsuperiorcourt.org/civil/ADR/](http://www.sccsuperiorcourt.org/civil/ADR/) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

---

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
ALTERNATIVE DISPUTE RESOLUTION  
INFORMATION SHEET / CIVIL DIVISION**

---

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

***What is ADR?***

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

***What are the advantages of choosing ADR instead of litigation?***

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

***What are the main forms of ADR offered by the Court?***

- < Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator then helps the parties to explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not decide the dispute. The parties do.
- < Mediation may be appropriate when:
  - < The parties want a non-adversary procedure
  - < The parties have a continuing business or personal relationship
  - < Communication problems are interfering with a resolution
  - < There is an emotional element involved
  - < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

- < **Arbitration** is a normally informal process in which the neutral (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or non-binding arbitration. Binding arbitration is designed to give the parties a resolution of their dispute when they cannot agree by themselves or with a mediator. If the arbitration is non-binding, any party can reject the arbitrator's decision and request a trial.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, is desired
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

- < **Neutral evaluation** is an informal process in which a neutral party (the evaluator) reviews the case with counsel and gives a non-binding assessment of the strengths and weaknesses on each side and the likely outcome. The neutral can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

- < **Special masters and referees** are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

- < **Settlement conferences** are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

#### *What kind of disputes can be resolved by ADR?*

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; and sports, among other matters.

#### *Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, for information about ADR procedures, or for other questions about ADR?*

##### **Contact:**

Santa Clara County Superior Court  
ADR Administrator  
408-882-2530

Santa Clara County DRPA Coordinator  
408-792-2704

EXHIBIT B

1 SEYFARTH SHAW LLP  
Andrew M. Paley (State Bar No. 149699)  
2 Sheryl L. Skibbe (State Bar No. 199441)  
Kimberly M. Foster (State Bar No. 243216)  
3 2029 Century Park East, Suite 3300  
Los Angeles, California 90067-3063  
4 Telephone: (310) 277-7200  
Facsimile: (310) 201-5219  
5 Email: [apaley@seyfarth.com](mailto:apaley@seyfarth.com)  
[sskibbc@seyfarth.com](mailto:sskibbc@seyfarth.com)  
6 [kfoster@seyfarth.com](mailto:kfoster@seyfarth.com)

7 Attorneys for Defendant  
RSM MCGLADREY, INC.

8  
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SANTA CLARA

ENDORSED)  
FILED

MAR 28 08

KIRI TORRE  
CHIEF EXEC. OFFICER/CLERK  
SUPERIOR COURT OF CA  
COUNTY OF SANTA CLARA  
DEPUTY

FILED BY FAX

11 LI DONG MA, individually and on behalf of all )  
12 others similarly situated, )

13 Plaintiff, )

14 v. )

15 RSM MCGLADREY, INC., a corporation;  
AMERICAN EXPRESS TAX AND  
16 BUSINESS SERVICES, INC., a corporation;  
and DOES 1-100, inclusive, )

17 Defendants. )  
18  
19

Case No. 108CV106397

DEFENDANT RSM MCGLADREY,  
INC.'S ANSWER TO PLAINTIFF'S  
UNVERIFIED COMPLAINT

Complaint Filed: 2/21/2008

20 Defendant RSM McGladrey, Inc. hereby answers Plaintiff Li Dong Ma's unverified  
21 Complaint as follows:  
22

23 GENERAL DENIAL

24 1. Pursuant to the provisions of California Code of Civil Procedure section  
25 431.30(d), Defendant denies, generally and specifically, each and every allegation, statement,  
26 matter and each purported cause of action contained in Plaintiff's Complaint, and without  
27 limiting the generality of the foregoing, denies, generally and specifically, that Plaintiff has been  
28

SEYFARTH SHAW LLP  
Andrew M. Paley (State Bar No. 149699)  
Sheryl L. Skibbe (State Bar No. 199441)  
Kimberly M. Foster (State Bar No. 243216)  
2029 Century Park East, Suite 3300  
Los Angeles, California 90067-3063  
Telephone: (310) 277-7200  
Facsimile: (310) 201-5219  
Email: [apaley@seyfarth.com](mailto:apaley@seyfarth.com)  
[sskibbe@seyfarth.com](mailto:sskibbe@seyfarth.com)  
[kfoster@seyfarth.com](mailto:kfoster@seyfarth.com)

Attorneys for Defendant  
RSM MCGLADREY, INC.

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

LI DONG MA, individually and on behalf of all )  
others similarly situated, )

Plaintiff, )

v. )

RSM MCGLADREY, INC., a corporation; )  
AMERICAN EXPRESS TAX AND )  
BUSINESS SERVICES, INC., a corporation; )  
and DOES 1-100, inclusive, )

Defendants. )

Case No. 108CV106397

**DEFENDANT RSM MCGLADREY,  
INC.'S ANSWER TO PLAINTIFF'S  
UNVERIFIED COMPLAINT**

Complaint Filed: 2/21/2008

Defendant RSM McGladrey, Inc. hereby answers Plaintiff Li Dong Ma's unverified  
Complaint as follows:

**GENERAL DENIAL**

1. Pursuant to the provisions of California Code of Civil Procedure section  
431.30(d), Defendant denies, generally and specifically, each and every allegation, statement,  
matter and each purported cause of action contained in Plaintiff's Complaint, and without  
limiting the generality of the foregoing, denies, generally and specifically, that Plaintiff has been

1 damaged in the manner or sums alleged, or in any way at all, by reason of any acts or omissions  
2 of Defendant.

3 **AFFIRMATIVE DEFENSES**

4 2. In further answer to Plaintiff's Complaint, Defendant alleges the following  
5 additional defenses. In asserting these defenses, Defendant does not assume the burden of proof  
6 as to matters that, pursuant to law, are Plaintiff's burden to prove.

7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to State a Cause of Action)**

9 3. The Complaint and each cause of action alleged therein fail to state facts  
10 sufficient to constitute claims upon which relief can be granted against Defendant.

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Statute of Limitations)**

13 4. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of  
14 limitations, including but not limited to, Code of Civil Procedure sections 338 and 340 and  
15 California Business & Professions Code section 17208.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Laches)**

18 5. Plaintiff has delayed inexcusably and unreasonably in the filing of this action  
19 causing substantial prejudice to Defendant, and thus, Plaintiff's claims are barred by the  
20 equitable doctrine of laches.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 **(Waiver and Estoppel)**

23 6. Plaintiff's Complaint, and each and every cause of action alleged therein, is  
24 barred by the doctrines of waiver and estoppel.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 **(Unclean Hands)**

27 7. Plaintiff's Complaint, and each and every cause of action alleged therein, is  
28 barred by the doctrine of unclean hands.



**SIXTH AFFIRMATIVE DEFENSE**

**(No Willful Failure to Pay Wages)**

8. Plaintiff is not entitled to any penalty award under section 203 of the California Labor Code since, at all times relevant and material herein, Defendant did not willfully fail to comply with the compensation provisions of the California Labor Code, Cal. Labor Code section 200, et seq., but rather acted in good faith and had reasonable grounds for believing that it did not violate the compensation provisions of the California Labor Code, Cal. Labor Code section 200, et seq.

**SEVENTH AFFIRMATIVE DEFENSE**

**(No Standing)**

9. Plaintiff is a former employee and lacks standing to seek injunctive relief, and civil penalties or damages under relevant portions of the California Labor Code, including but not limited to, section 558 and California Business and Professions Code section 17200 *et seq.* because, *inter alia*, Plaintiff has not suffered any injury in fact or lost money or property as a result of any unfair competition, and/or no penalties are available under the statutes Plaintiff sues upon and/or Plaintiff is no longer employed by Defendant.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Offset)**

10. Defendant is entitled to an off-set for any overpayments of wages it provided for work never actually performed, any damages incurred by Plaintiff's acts or omissions or inadvertent overpayment for hours worked.

**NINTH AFFIRMATIVE DEFENSE**

**(Accord and Satisfaction)**

11. Plaintiff's claims are barred, in whole or in part, pursuant to an accord and satisfaction.

**TENTH AFFIRMATIVE DEFENSE**

**(Good Faith Dispute)**

12. Plaintiff is not entitled to any penalty award under California Labor Code sections 201, 202, 203, and 226 because a good faith dispute exists as to the monies allegedly owed, such that Defendant cannot be held to have willfully failed to comply with the requirements of the Labor Code and/or the applicable wage orders, if any.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Plaintiff Exempt from Overtime Wages)**

13. At all times relevant and material here, Plaintiff and the putative class members classified as exempt employees were exempt from the requirements of the California Labor Code and the Industrial Welfare Commission: i.e., those putative class members were employed in an administrative, executive, professional, and/or relevant sales capacity within the meaning of the applicable wage order.

**PRAYER**

Wherefore, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing for the Complaint;
2. That judgment be entered in favor of Defendant and against Plaintiff on all causes of action;
3. That Defendant be awarded reasonable attorneys fees according to proof;
4. That Defendant be awarded the costs of suit incurred herein; and
5. That Defendant be awarded such other and further relief as the Court may deem appropriate.

DATED: March 27, 2008

SEYFARTH SHAW LLP

By 

Sheryl Skibbe  
Attorneys for Defendant  
RSM MCGLADREY, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Seyfarth Shaw LLP, 2029 Century Park East, Suite 3300, Los Angeles, California 90067-3063. On March 27, 2008, I served the within documents: DEFENDANT RSM MCGLADREY, INC.'S ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT



by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

Wayne S. Kreger  
William A. Baird  
Milstein, Adelman & Kreger, LLP  
2800 Donald Douglas Loop North  
Santa Monica, CA 90405  
Tel: 310-296-9600  
Fax: 310-396-0635

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 27, 2008, at Los Angeles, California.

  
Lee Drozd

RSM MC

Droz, Lee

From: Kenneth Bloom - (C) Nationwide Legal [kenbloom@dtac.net]  
Sent: Friday, March 28, 2008 9:17 AM  
To: Droz, Lee  
Subject: POD for Control Number 54879

NATIONWIDE LEGAL, INC.

ATTN: LEE D 75-9220

CTRL: 54879 ORDER DATE: 3/27/08 SERVICE TYPE: RSH/I/F  
CUST: 239 SEYFARTH SHAW LLP REF: 99999.000510

PU: SEYFARTH SHAW LLP DL: SANTA CLARA SUPERIOR COURTHOUSE  
2029 CENTURY PARK EAST 191 NORTH FIRST STREET  
LOS ANGELES CA 90067 SAN JOSE CA 95113  
RM: SUITE 3300 USA  
TO SEE: DANI310.201.1552 TO SEE: CLERK

DEL DATE: 3/28/08 TIME: 09:14 SIGN: DOC'S FILED!!!

\*NOTE: To respond to this email please use the following address:  
legal@nationwideasap.com

JS 44 (Rev. 12/07) (and rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

LI DONG MA, individually and on behalf of all others similarly situated

**DEFENDANTS**

ANDREW M. PALEY, INC.

**C08 01729****RS**(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Wayne S. Kreger (SBN 154759)  
William A. Baird (SBN 192675)  
Milstein, Adelman & Kreger, LLP  
2800 Donald Douglas Loop North, Santa Monica, CA 90405

Andrew M. Paley (SBN 149699) apaley@seyfarth.com  
Sheryl L. Skibbe (State Bar No. 199441) sskibbe@syefarth.com  
2029 Century Park East, Suite 3300, Los Angeles, CA 90067  
Tel: 310-277-7200 / Fax 310-201-5219

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>LABOR</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DJWW (405(g))	<input checked="" type="checkbox"/> 890 Other Statutory Actions
	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<b>IMMIGRATION</b>		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 462 Naturalization Application		
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		
		<input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Petition for Removal - 28 U.S.C 1332 (d) (2) 1441 and 1446 (Diversity).

Brief description of cause:

Alleged Unfair Business Competition and California Labor Code violations.

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD